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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,756	11/12/2003	Marc Nicolaas De Mul	J6864(C)	7538

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EXAMINER

MERCIER, MELISSA S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,756	Applicant(s) DE MUL ET AL.	
	Examiner Melissa S. Mercier	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-12-03, 3-21-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on 6-13-06 is acknowledged. The traversal is on the ground(s) that there is no undue search burden on the examiner. This is not found persuasive because Group I and Group III are drawn to different compositions. The search of Group I would not encompass the search of Group III.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-19 are pending in this application. Claims 9-19 are withdrawn from consideration.

Information Disclosure Statement

Receipt of the Information Disclosure Statements received on November 12, 2003 and March 21, 2005 are acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "up to about" is unclear to the examiner exactly what weight percent the applicant is claiming. The examiner interprets "up to" to not

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include 2%, however, the inclusion of the limitation "about" is interpreted to include 3%.

Clarification is requested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Vatter et al (US PGPub 2002/0028223).

Vatter teaches, "an anhydrous skin treatment composition comprising:

I. at least one fatty or oil phase comprising:

a. from about 0.1% to about 10 of non-spherical cross linked siloxane elastomer having a particle size from above 10 to about 200 microns, wherein the cross linked siloxane elastomer is capable of swelling and absorbing greater than 30% by weight of a solvent fluid;

b. from about 10 to about 80% of a solvent for the cross-linked siloxane elastomer;

II. from about 0.1% to about 50% of an emulsifier;

III. from about 0.1% to about 50% of a humectant

IV. optionally, from 0 to about 50% of a skin conditioning agent

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V. from 0.1% to about 30% of a pigment

VI. from 0 to about 5% water.

(paragraphs 0013 –0021).

The viscosity, opacity, gloss and normal force are inherent properties as the reference teaches the same composition as claimed in the instant application.

Regarding Claim 2, Vatter's Example 1, teaches cyclomethicone, a silicone oil, at 2.26% and 5% dimethicone/vinyl dimethicone cross polymer in cyclomethicone. (paragraph 0211). Additionally, Vatter's example 2 teaches the addition of 7.65% cyclomethicone (paragraph 0214).

Regarding Claims 3-4, Vatter teaches the pigment portion of the composition comprises "a solid that reflects light of certain wavelengths while absorbing light of other wavelengths. Useful pigments include talc, mica, magnesium carbonate, calcium carbonate, magnesium silicate, aluminum magnesium silicate, silica, titanium dioxide, zinc oxide, red iron oxide, yellow iron oxide, black iron oxide, ultramarine, polyethylene powder, methacrylate powder, polystyrene powder, silk powder, crystalline cellulose, tianate mica" (paragraphs 101-103).

Regarding Claim 7, Vatter teaches "preferred pigments having a primary average particle size from about 5nm to about 100,000nm" (paragraph 0105).

Regarding Claim 8, Vatter further teaches the addition of "solidifying agents including waxy materials such as carnauba wax, beeswax, paraffin; soaps such as sodium and potassium salts of higher fatty acids; higher fatty acids; polymeric materials; and celluloses" (paragraph 0170). Example VII teaches an eye shadow composition

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comprising 2.57% paraffin wax (paragraph 0230). The examiner is interpreting applicant's limitation of about 2% to include 2.57%.

Claims 1-6 and 8 rejected under 35 U.S.C. 102(b) as being anticipated by Sakuta (US Patent 6,747,115).

Sakuta teaches "a silicone polymer that is insoluble in organic solvents due to its three dimensional cross linked structure which swells up relative to fluorosilicate oils. The silicone polymer is a cross linked product of a SiH containing fluoro silicone and an unsaturated polyoxyalkylene. The Sakuta teachings relate to a paste-like composition formed by making the silicone compounds swell up in silicone oil and a cosmetic material" (abstract).

Sakuta's example 7 comprises:

"20% of a cross linked polysiloxane elastomer prepared according to example 3 (column 18, lines 45-54);

1% titanium oxide coated mica(a light scattering particle);

and water (a cosmetically acceptable carrier). (column 20, lines 50-66, column 21, lines 1-13).

The viscosity, opacity, gloss and normal force are inherent properties as the reference teaches the same composition as claimed in the instant application.

Regarding Claim 2, Sakuta teaches "examples of silicone oils include dimethylpolysiloxane and dimethylsiloxane-methylphenylsiloxane copolymer" (column 9, lines 45-50).

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Regarding Claims 3-4, Sakuta teaches "pigments including talc, mica, titanium oxide coated mica, titanium oxide coated talcs" (column 11, lines 4-50).

Regarding Claim 5, example 14, a cream, comprises 10% of a cross-linked polysiloxane elastomer, as prepared according to Example 6. (column 23, lines 59-67).

Regarding Claim 8, example 7 further comprises the thickeners: palmitic acid in the amount of 0.2% and dimethyloctyl p-aminobenzoic acid in the amount of 0.5% (column 20, lines 50-67).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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